

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

FEDERAL HOUSING FINANCE AGENCY, AS
CONSERVATOR FOR THE FEDERAL
NATIONAL MORTGAGE ASSOCIATION AND
THE FEDERAL HOME LOAN MORTGAGE
CORPORATION,

Plaintiff,

-against-

NOMURA HOLDING AMERICA INC., et al.,

Defendants.

No. 11-cv-6201 (DLC)

ECF Case

**DECLARATION OF PHILLIP A. BREST IN SUPPORT OF
DEFENDANTS' MOTION TO EXCLUDE THE TESTIMONY OF JOHN KILPATRICK**

PHILLIP A. BREST hereby declares:

1. I am a member in good standing of the Bar of this Court, and am an associate at Sullivan & Cromwell LLP, counsel for defendants Nomura Holding America Inc., Nomura Asset Acceptance Corporation, Nomura Home Equity Loan, Inc., Nomura Credit & Capital, Inc., Nomura Securities International, Inc., David Findlay, John McCarthy, John P. Graham, Nathan Gorin, and N. Dante LaRocca in this Action.

2. I submit this declaration in support of defendants' motion to exclude the testimony of John Kilpatrick.

3. Attached hereto as Exhibit 1 is a copy of the "Expert Report of John A. Kilpatrick, Ph.D., Concerning the Adherence of Appraisals to Appraisal Standards and Practice," including appendices thereto, dated May 15, 2014, submitted in this Action.

4. Attached hereto as Exhibit 2 is a copy of the “Expert Report of John A. Kilpatrick, Ph.D., Concerning the Accuracy of Appraisals to Appraisal Standards and Practice,” dated May 15, 2014, submitted in this Action.

5. Attached hereto as Exhibit 3 is a copy of the “Expert Report of John A. Kilpatrick, Ph.D.,” dated October 6, 2014, submitted in this Action.

6. Attached hereto as Exhibit 4 is a copy of the “Rebuttal Expert Report of John A. Kilpatrick, Ph.D.,” dated November 10, 2014, submitted in this Action.

7. Attached hereto as Exhibit 5 is a copy of the “Expert Report of Michael P. Hedden,” dated August 14, 2014, submitted in this Action.

8. Attached hereto as Exhibit 6 is a copy of the “Expert Report of John A. Kilpatrick, Ph.D., Concerning Adherence of Appraisals to Appraisal Standards and Practice,” including appendices thereto, dated January 6, 2014, submitted in *FHFA v. Goldman, Sachs & Co.*, No. 11 Civ. 6198 (DLC) (S.D.N.Y.).

9. Attached hereto as Exhibit 7 is a copy of the “Supplemental Expert Report of John A. Kilpatrick, Ph.D., Concerning Appraisal Accuracy and Adherence of Appraisals to Appraisal Standards and Practice,” including appendices thereto, dated March 14, 2014, submitted in *FHFA v. Goldman, Sachs & Co.*, No. 11 Civ. 6198 (DLC) (S.D.N.Y.).

10. Attached hereto as Exhibit 8 are excerpts from the transcript of the deposition of John Kilpatrick, which was taken on November 13 and 14, 2014, in this Action.

11. Attached hereto as Exhibit 9 are excerpts from the transcript of the deposition of John Kilpatrick, which was taken on February 12 and 13, 2014, in *FHFA v. Merrill Lynch & Co., Inc.*, No. 11-cv-6202 (DLC) (S.D.N.Y.).

12. Attached hereto as Exhibit 10 are excerpts from the transcript of the deposition of John Kilpatrick, which was taken on June 30 and July 1, 2014, in *FHFA v. HSBC North America Holdings, Inc.*, No. 11-cv-6189 (DLC) (S.D.N.Y.).

13. Attached hereto as Exhibit 11 are excerpts from the transcript of the deposition of John Kilpatrick, which was taken on July 14, 2014, in *FHFA v. HSBC North America Holdings, Inc.*, No. 11-cv-6189 (DLC) (S.D.N.Y.).

14. Attached hereto as Exhibit 12 are excerpts from the transcript of the deposition of John Kilpatrick, which was taken on July 15, 2014, in *FHFA v. HSBC North America Holdings, Inc.*, No. 11-cv-6189 (DLC) (S.D.N.Y.).

15. Attached hereto as Exhibit 13 are excerpts from the transcript of the deposition of Donald Epley, which was taken on October 30, 2014, in this Action.

16. Attached hereto as Exhibit 14 are excerpts from the transcript of the deposition of Donald Epley, which was taken on February 19, 2014, in *FHFA v. Merrill Lynch & Co., Inc.*, No. 11-cv-6202 (DLC) (S.D.N.Y.).

17. Attached hereto as Exhibit 15 are excerpts from the transcript of the deposition of Donald Epley, which was taken on July 8, 2014 in *FHFA v. HSBC North America Holdings, Inc.*, No. 11-cv-6189 (DLC) (S.D.N.Y.).

18. Attached hereto as Exhibit 16 are excerpts from the transcript of the deposition of Debashish Chatterjee, which was taken on January 15, 2014 in *FHFA v. HSBC North America Holdings, Inc.*, No. 11-cv-6189 (DLC) (S.D.N.Y.).

19. Attached hereto as Exhibit 17 are excerpts from the transcript of the deposition of Jacqueline Doty, which was taken on June 12, 2014 in *FHFA v. Goldman, Sachs & Co.*, No. 11-cv-6198 (DLC) (S.D.N.Y.).

20. Attached hereto as Exhibit 18 is a copy of the “Expert Report of Hans R. Isakson, Ph.D.,” and appendices thereto, dated August 14, 2014, submitted in this Action.

21. Attached hereto as Exhibit 19 is a copy of the “Expert Report of Jerry A. Hausman,” dated August 14, 2014, submitted in this Action.

22. Attached hereto as Exhibit 20 is a copy of the “Expert Report of Lewis J. Allen,” dated May 23, 2014, submitted in *FHFA v. Goldman, Sachs & Co.*, No. 11 Civ. 6198 (DLC).

23. Attached hereto as Exhibit 21 is an excerpt of the 2005 Edition of the Uniform Standards of Professional Appraisal Practice.

24. Attached hereto as Exhibit 22 is an excerpt of the 2006 Edition of the Uniform Standards of Professional Appraisal Practice.

25. Attached hereto as Exhibit 23 is an excerpt of the 2014-2015 Edition of the Uniform Standards of Professional Appraisal Practice.

26. Attached hereto as Exhibit 24 is a copy of a December 14, 2012 court hearing in *FHFA v. UBS Americas, Inc.*, No. 11-cv-5201 (DLC) (S.D.N.Y.).

27. Attached hereto as Exhibit 25 is a copy of the Case-Shiller Calculations Spreadsheet.

28. Attached hereto as Exhibit 26 is a copy of the appraisal report for NHELI_2006_FM2_2002233153, bearing the production number NOM-FHFA_01320870.

29. Attached hereto as Exhibit 27 is a copy of the GADGET Protocol—External Obsolescence, Exhibit 55119 at the deposition of John Kilpatrick, which was taken on July 15, 2014, in *FHFA v. HSBC North America Holdings, Inc.*, No. 11-cv-6189 (DLC) (S.D.N.Y.).

30. Attached hereto as Exhibit 28 is a copy of the appraisal report for NHELI_2007_1_2001856666, bearing the production number NOM-FHFA_02908722.

31. Attached hereto as Exhibit 29 is a copy of the appraisal report for NAA_2005_AR6_1002235662, bearing the production number NOM-FHFA_00016764.

32. Attached hereto as Exhibit 30 is a copy of Freddie Mac Publication No. 794, "Home Value Explorer," dated March 2012.

33. Attached hereto as Exhibit 31 is a copy of the *National Mortgage News*, "CFPB Disclosure Rule Takes Its Toll," dated February 11, 2014.

34. Attached hereto as Exhibit 32 are excerpts from the transcript of the deposition of Hans Isakson, which was taken on June 19 and 20, 2014 in *FHFA v. HSBC North America Holdings, Inc.*, No. 11-cv-6189 (DLC) (S.D.N.Y.).

35. Attached hereto as Exhibit 33 is a copy of the "Expert Report of Lee Kennedy," dated August 14, 2014, in this Action.

36. Attached hereto as Exhibit 34 is a copy of the Complaint filed in *Hopkins v. Dean Witter Reynolds, Inc.*, No. 3:86-131-15 (D.S.C.) on January 10, 1986.

37. Attached hereto as Exhibit 35 is a copy of a December 1998 Washington Appraiser License Application submitted by John Kilpatrick.

38. Attached hereto as Exhibit 36 is a copy of a July 1999 Utah Appraiser License Application submitted by John Kilpatrick.

39. Attached hereto as Exhibit 37 is a copy of a December 2003 Mississippi Appraiser License Application submitted by John Kilpatrick.

40. Attached hereto as Exhibit 38 is a copy of a July 2004 Application for the Appraisal Qualification Board submitted by John Kilpatrick.

41. Attached hereto as Exhibit 39 is a copy of a May 2005 Ohio Appraiser License Application submitted by John Kilpatrick.

42. Attached hereto as Exhibit 40 is a copy of a December 2005 New Jersey Appraiser License Application submitted by John Kilpatrick.

43. Attached hereto as Exhibit 41 is a copy of an August 2009 Tennessee Appraiser License Application submitted by John Kilpatrick.

44. Attached hereto as Exhibit 42 is a copy of a May 2010 Texas Appraiser License Application submitted by John Kilpatrick.

45. Attached hereto as Exhibit 43 is a copy of an October 2010 Utah Appraiser License Application submitted by John Kilpatrick.

46. Attached hereto as Exhibit 44 is a copy of a June 2011 Nevada Appraiser License Application submitted by John Kilpatrick.

47. Attached hereto as Exhibit 45 is a copy of a September 2011 Utah Appraiser License Application submitted by John Kilpatrick.

48. Attached hereto as Exhibit 46 is a copy of a December 2012 Wisconsin Appraiser License Application submitted by John Kilpatrick.

49. Attached hereto as Exhibit 47 is a copy of a January 2013 West Virginia Appraiser License Application submitted by John Kilpatrick.

50. Attached hereto as Exhibit 48 is a copy of a February 2013 Arizona Appraiser License Application submitted by John Kilpatrick.

51. Attached hereto as Exhibit 49 is a copy of an August 2013 West Virginia Appraiser License Application submitted by John Kilpatrick.

52. Attached hereto as Exhibit 50 is a copy of the errata sheet to the deposition of John Kilpatrick, which was taken on July 15, 2014, in *FHFA v. HSBC North America Holdings, Inc.*, No. 11-cv-6189 (DLC) (S.D.N.Y.), dated November 6, 2014.

53. Attached hereto as Exhibit 51 is a copy of an Arrest Warrant and Indictment against John Kilpatrick, dated October 24, 1990.

54. Attached hereto as Exhibit 52 is a copy of an Arrest Warrant and Indictment against John Kilpatrick, dated September 20, 1990.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: Washington, D.C.
December 5, 2014.

/s/ Phillip A. Brest
Phillip A. Brest